United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

75-7270

B

UNITED STATES COURT OF APPEALS

For The Second Circuit

Docket No. 75-7270

- - - - - - - - - - - - X - - - - - - - - - - - -

P/S

CHARLES MERRILL MOUNT,

Plaintiff-Appellant,

- v -

ALLEN HERBERT ARROW, MICHAEL WARD STOUT & JANICE LEACH,

Defendants-Appellees.

BRIEF FOR THE DEFENDANTS-APPELLEES

ARROW SILVERMAN & PARCHER, P.C.
Attorneys for Defendants-Appellees
1370 Avenue of the Americas
New York, New York 10019
(212) 586-1451

Of Counsel:

Allen H. Arrow
Howard G. Leventhal

UNITED STATES COURT OF APPEALS

For The Second Circuit

Docket No. 75-7270

- - - - - - - - - - X - - - - - - - - - -

CHARLES MERRILL MOUNT,

Plaintiff-Appellant,

- v -

ALLEN HERBERT ARROW, MICHAEL WARD STOUT & JANICE LEACH,

Defendants-Appellees.

BRIEF FOR THE DEFENDANTS-APPELLEES

ARROW SILVERMAN & PARCHER, P.C.
Attorneys for Defendants-Appellees
1370 Avenue of the Americas
New York, New York
(212) 586-1451

Of Counsel:

ALLEN H. ARROW
HOWARD G. LEVENTHAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Page

Statutes, Treatises, Rules:

UNITED STATES COURT OF APPEALS

For The Second Circuit

Docket No. 75-7270

- - - - - - - - - - -X- - - - - - - - - - -

CHARLES MERRILL MOUNT,

Plaintiff-Appellant,

- v -

ALLEN HERBERT, MICHAEL WARD
STOUT & JANICE LEACH,

Defendants-Appellees.

BRIEF FOR THE DEFENDANTS-APPELLEES

Counter-Statement of the Issues

Defendants-Appellees respectfully submit that the principal issues presented are:

First Issue

Whether the District Court erred in dismissing the amended complaint for failure to state a federally cognizable claim?

Second Issue

Whether plaintiff-appellant may properly recast the theory of his case and thereby amend his complaint on appeal to attempt to state a federally cognizable cause of action?

Third Issue

If the second issue is answered in the affirmative (but only in such event), whether plaintiff-appellant's amended complaint states a cause of action under 42 U.S.C. Section 1983 and/or Section 1985(3)?

Counter-Statement of the Case

This action was commenced against defendants-appellees by plaintiff-appellant (a non-lawyer* appearing pro se), alleging violations of the Fourth, Fifth and Fourteenth Amendments of the United States Constitution, and of 18 U.S.C. Sections 1341 and 1343. The complaint and amended complaint

---

* Although a non-lawyer, plaintiff-appellant is no stranger to the courts, having prosecuted dozens of actions by himself. At least two actions in the United States District Court for the Southern District of New York - Mount v. Long, 74 Civ. 321, and Mount v. Long, 74 Civ. 1244 - and two actions in the Supreme Court of the State of New York - Mount v. Orenstein Arrow Silverman & Parcher, P.C., Index No.09177/75 (New York County) and Mount v. Suchow, Index No. 6837/75 (Queens County) - as well as a habeas corpus proceeding in the Supreme Court of the State of New York, Mount v. Irish Consulate General, Index No. 35091/73 (New York County) - were instituted by plaintiff-appellant arising out of the same operational facts as the case at bar.

alleged that defendants-appellees conspired with certain persons who burglarized the home of plaintiff-appellant in the Republic of Ireland; that they conspired with certain persons who burglarized plaintiff-appellant's suitcases in a hotel in Paris, France; and that they conspired to deprive plaintiff-appellant of the companionship of his wife and minor children by hiding them and smuggling them out of the country.

After issue was joined, plaintiff-appellant moved for summary judgment, and defendants-appellees moved for dismissal of the complaint.

By memorandum decision dated April 2, 1975, United States District Judge John M. Cannella denied plaintiff-appellant's motion and granted the motion of defendants-appellees. In his 16-page opinion, Judge Cannella, being properly (if not zealously) solicitous of the rights of the pro se litigant, showed that not only did plaintiff-appellant not state a federally cognizable cause of action under any of the statutes alleged in the amended complaint, but, giving the pleadings and affidavits the broadest possible interpretation, even if plaintiff-appellant had alleged violation of the conspiracy sections of the Civil Rights Act,

42 U.S.C. Section 1985(3), the acts alleged in the pleadings and (voluminous) affidavits submitted by plaintiff-appellant would not be sufficient to state a cause of action thereunder.

Plaintiff-appellant duly served and filed a notice of appeal from the memorandum decision and order of the District Court. In his affidavit in support of his motion to appeal in forma pauperis, plaintiff-appellant seized upon the dicta in the District Court's decision and attempted to recast the theory of his action on appeal to show an alleged deprivation of his civil rights by reason of racial and social prejudice against him by defendants. In a memorandum decision and order dated April 14, 1975 (a copy of which is annexed as Exhibit A, granting plaintiff-appellant's motion for leave to appeal in forma pauperis, the District Court expressly noted that plaintiff-appellant "now seeks to recast the theory of this case on appeal, and, in effect, to amend his complaint on appeal so as to state a cause of action under 42 U.S.C. Section 1985(3) -- a claim which we found to be wholly lacking in the Amended Complaint * * * *"

ARGUMENT

I. THE DISTRICT COURT PROPERLY DISMISSED THE AMENDED COMPLAINT FOR FAILURE TO STATE A FEDERALLY COGNIZABLE CAUSE OF ACTION

Plaintiff-appellant's Amended Complaint is predicated solely upon the alleged misconduct of private individuals. That defendants-appellants Arrow and Stout are attorneys (the third defendant, Ms. Leach, a secretary, was never served with process), and, as such, officers of the court, does not alter the otherwise private nature of their conduct and thereby render it "under color of law." See, e. g., Page v. Sharpe, 487 F.2d 567, 569-70 (1st Cir. 1973). Plaintiff-appellant's failure to allege with particularity conduct constituting "state action" or conduct "under color of law" renders inapplicable to this controversy the Civil Rights Act, 42 U.S.C. Section 1983, Adickes v. S. H. Kress & Co., 398 U.S. 144, 150 (1970); Lefcourt v. Legal Aid Society, 445 F.2d 1150, 1153-54 (2nd Cir. 1971); Palermo v. Rockefeller, 323 F.Supp. 478, 483 (S.D.N.Y. 1971), and the Fourteenth Amendment to the Constitution. United States v. Price, 383 U.S. 787, 799-800 (1966); Mulvihill v. Julia L. Butterfield Memorial Hospital, 329 F.Supp. 1020, 1022 (S.D.N.Y. 1971).

Similarly, plaintiff-appellant's failure to allege any violation by the Federal government or its agencies defeats his Fourth Amendment claims, Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 392 (1971), and Fifth Amendment claims, Public Utilities Commission v. Pollak, 343 U.S. 451, 461 (1952); New York City Jaycees, Inc. v. United States Jaycees, Inc., 512 F.2d 856, 858 (2d Cir. 1975)("private action is immune from the restrictions of the Fifth and Fourteenth Amendments."); Landowners Consideration Assn. v. Montana Power Co., 300 F.Supp. 54, 57 (D. Mont. 1969), appeal dismissed, 439 F.2d 722 (9th Cir. 1971); Bell v. Hood, 71 F.Supp. 813, 816 (S.D. Cal. 1947); cf. Loncassion v. Leekity, 334 F.Supp. 370, 374 (D. N.M. 1971); Koch v. Zuieback, 316 F.2d 1, 2 (9th Cir. 1963); Garfield v. Palmieri, 193 F.Supp. 582, 586 (E.D.N.Y.) aff'd per curiam, 290 F.2d 821 (2d Cir. 1961), cert. denied 368 U.S. 827 (1962).

Plaintiff-appellant's alleged claims under 18 U.S.C. Sections 1341 and 1343 are likewise without foundation. Section 1341 is the federal mail fraud statute. Its purpose is to prevent the Post Office from being used to carry

fraudulent schemes into effect. [illegible]er v. United States, 363 U.S. 370, 389 (1960). As the Court of Appeals for the Eighth Circuit has more recently stated:

> The purpose of 18 U.S.C. Section 1341 is to prevent the Postal Service from being used to carry out fraudulent schemes, regardless of what is the exact nature of the scheme and regardless of whether it happens to be forbidden by state law.

United States v. States, 488 F.2d 761, 767 (8th Cir. 1973), cert. denied, 417 U.S. 909 (1974). See also, United States v. Cashin, 281 F.2d 669, 674 (2nd Cir. 1960).

Section 1343 concerns frauds and schemes to defraud involving the use of wire, radio or telephone communications in interstate or foreign commerce. It was designed to prevent wire, radio and television facilities from being employed as vehicles of transmission for criminal schemes to defraud, a purpose identical to that which Section 1341 serves with regard to the mails.

Plaintiff-appellant cannot assert violations of Title 18 United States Code as the basis for a civil action, the duty to prosecute such offenses having been delegated, by statute, to the United States Attorneys. 28 U.S.C. Section 547. These penal statutes cannot serve as the predicate of an implied private civil cause of action except (1) where

criminal liability was inadequate to insure the full effectiveness of the statute which Congress had intended, (2) where the interest of the plaintiffs falls within the class of interests that the statute was intended to protect, and (3) where the alleged harm that had occurred was of the type that the statute was intended to forestall. National Ass'n for Community Development v. Hodgson, 356 F.Supp. 1399, 1403 (D. D.C. 1973). Accord, Wyandotte Co. v. United States, 389 U.S. 191, 202 (1967); J. I. Case Co. v. Borak, 377 U.S. 426, 431-34 (1964); Stewart v. Travelers Corp., 503 F.2d 108, 109-114 (9th Cir. 1974); Ash v. Cort, 496 F.2d 416, 421-24 (3rd Cir. 1974), cert. granted, _____ U.S. _____, 43 U.S.L.W. 3279 (U.S. Nov. 11, 1974) (No. 73-1908); Burke v. Compania Mexicana de Aviacion, 433 F.2d 1031, 1033-34 (9th Cir. 1970); United States v. Perma Paving Co., 332 F.2d 754, 758 (2nd Cir. 1964); River v. Richmond Metropolitan Authority, 359 F.Supp. 611, 638-39 (E.D. Va.), aff'd, 481 F.2d 1280 (4th Cir. 1973) (per curiam); Ash v. Cort, 350 F.Supp. 227, 231 (E.D. Pa. 1972), aff'd, 471 F.2d 811 (3rd Cir. 1973); Fullerton v. Monongahela Connecting R.R. Co., 242 F.Supp. 622, 625 (W.D. Pa. 1965); cf., National R. R. Passenger Corp. v. National Assn. of R.R. Passengers, 414 U.S. 453

(1974); compare, Gerbing v. I.T.T. Rayonier, Inc., 322 F.Supp. 309, 310 (N.D. Fla. 1971); Bass Angler Sportsmen's Society v. Scholze Tannery, Inc., 329 F.Supp. 339, 345 (E.D. Pa. 1971); Bass Angler Sportsmen's Society v. United States Steel Corp., 324 F.Supp. 412, 415 (N.D. Ala.), aff'd, 447 F.2d 1304 (5th Cir. 1971) (per curiam).

The federal courts have consistently rejected the implication of civil remedies from the provisions of those penal statutes. See Oppenheim v. Sterling, 368 F.2d 516, 518-19 (10th Cir. 1966), cert. denied, 386 U.S. 1011 (1967) (where the court rejected the creation of a civil cause under Sections 1341 and 1342), and Napper v. Anderson, Henley, Shields, Bradford & Pritchard, 500 F.2d 634, 636 (5th Cir. 1974) (where the court likewise rejected an implied civil cause of action under Section 1343).

The claims alleged by plaintiff-appellant are all basically common law tort actions* -- as the opinion of the District Court explicitly spelled out for the edification of plaintiff-appellant -- for which there exist adequate legal

---

* E. G., conversion, trespass to chattels, misrepresentation, fraud and deceit, and interference with family relations.

remedies in the state courts (there being no diversity of citizenship between plaintiff-appellant and defendants-appellees). Indeed, within ten days of service of notice of entry of the decision and order of the District Court, plaintiff-appellant instituted an action in the Supreme Court of the State of New York, County of New York, against the law firm of which defendant-appellee Arrow is a member and of which defendant-appellee Stout is a former associate, alleging the commission of various common law torts.

Under these circumstances, the District Court acted properly in dismissing the amended complaint on the ground that no federally cognizable cause of action was stated therein.

II. PLAINTIFF-APPELLANT MAY NOT RECAST THE THEORY OF HIS CASE ON APPEAL

Plaintiff-appellant served and filed a complaint and an amended complaint, amended as of right, in the District Court. However, upon the District Court's dismissal of his amended complaint, plaintiff-appellant thereafter attempted to amend his amended complaint on appeal by recasting the theory of his action. This was immediately caught and noted with disapproval by Judge Cannella, who had himself set up that possible theory and then knocked it down, showing its inapplicability under the facts alleged or implied.

It has been held that where, although given an opportunity to amend, the pleader has stood upon his pleading and appealed from a judgment of dismissal, he will not normally be allowed to amend either in the appellate court or in the trial court if the order of dismissal is affirmed, unless the mandate of the appellate court expressly permits such amendment. 3 Moore's Fed. Practice, Paragraph 15.11 at 967 (1974); Food Handlers Local 425 v. Pluss Poultry, Inc., 23 FRD 109 (W. D. Ark. 1958); 222 East Chestnut Street Corp. v. Lakefront Realty Corp., 256 F.2d 513 (7th Cir. 1958), cert. denied 358 U.S. 907 (1958). A new issue, not raised by the pleadings in the District Court, cannot be raised for the first time on appeal. Walker v. Felmont Oil Corp., 262 F.2d 163, 165 (6th Cir. 1958), cert. denied 361 U.S. 840 (1959); Jones v. Kennedy, 2 FRD 357 (D. D.C. 1942).

In the case at bar, plaintiff-appellant has already amended his complaint once as of right. Subsequent to the District Court's dismissal of his amended complaint he did not move for leave to amend. The alleged facts upon which he now attempts to recast the theory of his action, if they indeed exist, were known to plaintiff-appellant at the

time he drafted his complaint and amended complaint. Under the circumstances, it would be improper to allow him to recast the theory of his action on appeal. 222 East Chestnut Street Corp. v. Lakefront Realty Corp., supra, 256 F.2d at 515. Furthermore, this court is entitled to affirm the judgment below on any ground supported by the record if the parties had an opportunity to discuss it in their briefs in the appellate court, even if such ground was not the basis of the trial court's judgment. Paskaly v. Seale, 506 F.2d 1209, 1211 n.4 (9th Cir. 1974).

III. PLAINTIFF-APPELLANT HAS NOT STATED A CAUSE OF ACTION UNDER 42 U.S.C. SECTIONS 1983 OR 1985(3)

For the first time in this case, on appeal, plaintiff-appellant alleges a deprivation of rights under 42 U.S.C. Sections 1983 and 1985(3). This contention is without merit, as Judge Cannella noted (Exhibit A).

For an action to lie under 42 U.S.C. Section 1983, there must be a deprivation of rights under color of state law. Disregarding for the moment the fact that the action complained of was purely "private" (see discussion on pp. 5-6, supra), and, therefore, 42 U.S.C. Section 1983 is

inapplicable, Kovacs v. Goodman, 383 F.Supp. 507, 509 (E.D. Pa. 1974), according to plaintiff-appellant, defendants-appellees were obviously not acting under color of any statute of any "State or Territory" within the ambit of the statute. Plaintiff-appellant clearly alleges (Pl.Br. 32) that they were acting as arms of the Republic of Ireland to enforce the judgment of a foreign court, specifically, of the High Court of Dublin. The Republic of Ireland is neither a State nor a territory of the United States of America. Hence, the acts alleged, even if true (which they are not), are outside the scope of the statute. Furthermore, rather than attempting to enforce that judgment, Exhibit B to plaintiff-appellant's brief makes clear that Arrow was merely reciting his belief as to its existence. Had Arrow been attempting to enforce such judgment, he would have proceeded by way of seeking the extradition to the Republic of Ireland of plaintiff-appellant and his son or by applying for a writ of habeas corpus for the son of plaintiff-appellant, neither of which remedies were sought (or are alleged or implied to have been sought).

Furthermore, since any alleged "injuries" to plaintiff-appellant are obviously simple common law torts rather than wrongs of a constitutional magnitude, no cause

of action lies under 42 U.S.C. Section 1983. Street v. Surdyka, 492 F.2d 368, 371 (4th Cir. 1974); Jenkins v. Meyers, 338 F.Supp. 383, 389 (N.D. Ill. 1972), aff'd, 481 F.2d 1406 (7th Cir. 1973), Commonwealth of Pennsylvania ex rel. Feiling v. Sincavage,* 313 F.Supp. 967 (W.D. Pa. 1970), aff'd 439 F.2d 1133 (3rd Cir. 1971); Harris v. Turner, 329 F.2d 918 (6th Cir. 1964), cert. denied, 379 U.S. 907, reh. denied, 379 U.S. 985.

Nor has plaintiff-appellant shown the existence of a federally cognizable cause of action under 42 U.S.C. Section 1985(3). That statute was not intended to create a general federal tort law. As was stated by Mr. Justice Stewart in Griffin v. Breckenridge, 403 U.S. 88, 102-103 (1971):

> that the statute was meant to reach private action does not, however, mean that it was intended to apply to all tortious, conspiratorial interferences with the rights of others . . . . The constitutional shoals that would lie in the

---

* A "trespass to property, negligent or intentional, is a common law tort and does not infringe the federal Constitution." 313 F.Supp. at 970.

> path of interpreting Section 1985(3) as a general federal tort law can be avoided by giving full effect to the congressional purpose -- by requiring, as an element of the cause of action, the kind of invidiously discriminatory motivation stressed by the sponsors of the limiting amendment . . . . The language requiring intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action. The conspiracy in other words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all.

Regardless of how plaintiff-appellant attempts to denominate his alleged causes of action, they are basically common law torts, such as conversion and interference with family rights, which cannot form the predicate of an action under 42 U.S.C. Section 1985(3). Hodge v. Stout, 377 F.Supp. 131, 135 (E.D. Tenn. 1974). It has long been the practice of the federal courts to refuse to entertain domestic relations or child custody cases on the ground that there is no jurisdiction, and such matters are best left to the State courts. Barber v. Barber, 62 U.S. (21 How.) 582, 584 (1858); In re Burrus, 136 U.S. 586 (1890); Gargallo v. Gargallo, 472 F.2d 1219 (6th Cir. 1973), appeal dismissed, 414 U.S. 805 (1973); Hernstadt v. Hernstadt, 373 F.2d 316 (2d Cir. 1967). Yet this is precisely the type of alleged controversy in which plaintiff-appellant seeks to embroil the

federal courts. From a reading of the pleadings and affidavits, it is obvious that this action is bottomed on the de facto separation of plaintiff-appellant from his wife (who is not a party to this action) and an alleged dispute with her as to custody over and visitation rights to their children.

For the first time, in his appeal, plaintiff-appellant raises the possibility of racial and social prejudice against him personally by defendant-appellee Arrow,* who, like plaintiff-appellee, is also of the Jewish religion. Rather than showing any racially or socially oriented invidious ba bias or prejudice against Jewish people and/or artists and/or partners in mixed marriages or the offspring thereof as a class by defendant-appellee Arrow, plaintiff-appellant simply tries to show a general historical antipathy of the Jewish people in general (rather than of Arrow specifically) towards artists or those marrying outside the religion. To state a cause of action under 42 U.S.C. Section 1985(3), there must

---

* Plaintiff-appellant makes no attempt at showing any prejudice -- racial, social or otherwise -- against him by Stout or Leach.

be shown a conspiracy directed against a person as a member of a class, not against him as an individual. Griffin v. Breckinridge, supra, 403 U.S. at 102; Kletschka v. Driver, 411 F.2d 436, 447 (2d Cir. 1969); Birnbaum v. Trussel, 371 F.2d 672 (2nd Cir. 1966); Turner v. Baxley, 354 F.Supp. 963, 973 (D. Vt. 1972). Indeed, paragraph 26 of the Amended Complaint makes clear that such alleged hostility is not on the part of Arrow, but on the part of the children of plaintiff-appellant. Nor has plaintiff-appellant shown how he was allegedly deprived of his constitutional rights by reason of any such alleged prejudice. Hence, no cause of action is stated under 42 U.S.C. Section 1985(3). Westberry v. Gilman Paper Co., 507 F.2d 206 (5th Cir. 1975); Barrio v. McDonough Dist. Hospital, 377 F.Supp. 317 (S.D. Ill. 1974); Action v. Gannon, 450 F.2d 1227 (8th Cir. 1971); cf. Bellamy v. Mason's Stores, Inc., 508 F.2d 504 (4th Cir. 1974); MacDonald v. Shawnee Country Club, Inc., 438 F.2d 632 (6th Cir. 1971), cert. denied, 403 U.S. 932, reh. denied, 404 U.S. 875; Dotlich v. Kane, 497 F.2d 390 (8th Cir. 1974).

All that plaintiff-appellant has done in his lengthy brief is to raise general allegations of personal animosity by defendant-appellee Arrow against him and allegations of

antipathy by the Jewish people in general towards artists, a class of which plaintiff-appellant allegedly is a member. The wrongs allegedly committed against plaintiff-appellant are not of a constitutional stature, but simply amount to common law torts which, in the absence of diversity of citizenship between plaintiff-appellant and defendants-appellees, are properly triable in the state courts.

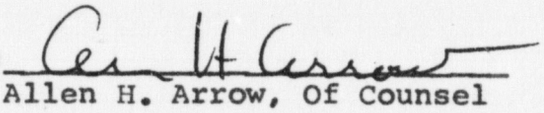
CONCLUSION

It is respectfully submitted that the judgment of the District Court which dismissed plaintiff-appellant's claim against defendants-appellees should be affirmed.

Dated: New York, New York
July 2 , 1975

Respectfully submitted,

ARROW SILVERMAN & PARCHER, P.C.
Attorneys for Defendants-Appellants
Arrow and Stout
1370 Avenue of the Americas
New York, New York 10019
(212) 586-1451

By: 
Allen H. Arrow, Of Counsel

Of Counsel:

Allen H. Arrow
Howard G. Leventhal

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

- X

CHARLES MERRILL MOUNT

v.

ALLEN HERBERT ARROW, MICHAEL WARD STOUT & JANICE LEACH.

I.F.P.
Action Number
75 Civ. 173

- X

NOTICE OF APPEAL

TO

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Notice is hereby given that Charles Merrill Mount above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the *~~decision and order of U.S.D.C.-S.D.N.Y.(Cannella, D.J.) dismissing the complaint on April 2, 1975.~~

April 23, 1975.

mailed by Pro Se Clerk
Notice/to:

Signed Edward M. Chikofsky

Charles Merrill Mount
135 Beach 145 Street
Neponsit, N.Y. 11694

By: Edward M. Chikofsky
Deputy Pro Se Clerk

M.L.Leventhal, Esq.
1370 Avenue of the Americas
New York, N.Y. 10019

CHARLES MERRILL MOUNT
-v-
ALLEN HERBERT ARROW, et al.

75 Civ. 173(JMC) PRO SE

MEMORANDUM

Notwithstanding the fact that Mount now seeks to recast the theory of this case on appeal and, in effect, to amend his complaint on appeal so as to state a cause of action under 42 U.S.C. §1985(3)- a claim which we found to be wholly lacking in the Amended Complaint (see p.p. 12-14 of the Court's Memorandum Decision of April 2, 1975),* he nonetheless is entitled to avail himself of an opportunity for appellate review of our decision. Accordingly, he is hereby granted leave to appeal in forma pauperis.

SO ORDERED.

Dated: April 14, 1975
New York, N.Y.

John M. Cannella
JOHN M. CANNELLA
U.S.D.J.

* It is readily apparent to this Court that Mount, after reading the elements of a §1985(3) claim in our decision of April 2, decided to recast his case in such fashion as to state a claim under that section. Hence, the conclusory allegations recited on p.p. 1-2 of his instant affidavit. Compare these with ¶ 26 of the Amended Complaint and the Amended Complaint as a whole.

18 United States Code, Section 1341

§ 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office Department, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 763; May 24, 1949, c. 139, § 34, 63 Stat. 94.

18 United States Code, Section 1343

§ 1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years, or both. Added July 16, 1952, c. 879, § 18(a), 66 Stat. 722, and amended July 11, 1956, c. 561, 70 Stat. 523.

42 United States Code, Section 1983

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

R.S. § 1979.

42 United States Code, Section 1985(3)

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

R.S. § 1980.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- -X

CHARLES MERRILL MOUNT,

Plaintiff-Appellant,

-against-

ALLEN HERBERT ARROW, MICHAEL WARD STOUT, & JANICE LEACH,

Defendants-Appellees.

- -X

AFFIDAVIT OF SERVICE

75-7270

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

JANE A. CASSELMAN, being duly sworn, deposes and says that deponent is not a party to this action, is over the age of 18 and resides at 138 Park Place, Brooklyn, New York. That on the 3rd day of July, 1975, deponent served the Brief for the Defendants-Appell

Defendants-Appellees upon Charles Merrill Mount, plaintiff pro se in this action, at 230 Beach 146th Street, Neponsit, New York, the address designated for that purpose by depositing a true copy thereof enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Jane A. Casselman

JANE A. CASSELMAN

Sworn to before me this
3rd day of July, 1975.

Howard C. Leventhal

Notary Public

HOWARD C. LEVENTHAL
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Certificate filed in [illegible] County
Commission Expires March 30, 1977

STATE OF NEW YORK, COUNTY OF ss.:

, being duly sworn, deposes and says, that

deponent is the in the within action; that deponent has read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

☐ CORPORATE VERIFICATION

deponent is the of the corporation named in the within action; that deponent has read the foregoing and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because is a corporation. Deponent is an officer thereof, to-wit, its The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this day of 19 .....

☐ ATTORNEY'S AFFIRMATION

STATE OF NEW YORK, COUNTY OF ss.:

The undersigned, an attorney admitted to practice in the courts of New York State; shows, that deponent is the attorney(s) of record for in the within action; that deponent has read the foregoing and knows the contents thereof; that same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

☐ CERTIFICATION BY ATTORNEY

certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

Dated: .....

☐ AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK, COUNTY OF ss.:

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 deponent served the within

upon attorney(s) for

in this action, at

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in-a post office-official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

☐ AFFIDAVIT OF PERSONAL SERVICE

upon

the herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me, this day of 19

.....

NOTICE OF ENTRY

Sir : PLEASE TAKE NOTICE that the within is a true-certified copy of a

duly entered in the office of the clerk of the within named court

on 19

Dated: 19

Yours, etc.,

ARROW SILVERMAN & PARCHER, P.C.

Attorneys for

Office and Post Office Address

1370 Avenue of the Americas

Borough of Manhattan New York, N.Y. 10019

To:

Attorney for

NOTICE OF SETTLEMENT

Sir : PLEASE TAKE NOTICE that

of which the within is a true copy will be presented for settlement to Mr. Justice

one of the Justices of the within named Court at

on the day of 19

at M.

Dated: 19

Yours, etc.,

ARROW SILVERMAN & PARCHER, P.C.

Attorneys for

Office and Post Office Address

1370 Avenue of the Americas

Borough of Manhattan New York, N.Y. 10019

To: Esq.

Attorney for

Index No. 75-7270 19

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CHARLES MERRILL MOUNT,

Plaintiff-Appellant,

-against-

ALLEN HERBERT ARROW, MICHAEL WARD STOUT & JANICE LEACH,

Defendants-Appellees.

AFFIDAVIT OF SERVICE

ARROW SILVERMAN & PARCHER, P.C.

Attorneys for Defendants-Appellees

Office and Post Office Address

1370 Avenue of the Americas

Borough of Manhattan New York, N.Y. 10019

(212) 586-1451

To: Esq.

Attorney for

Service of a copy of the within

is hereby admitted.

Dated, N.Y., 19

Attorney for

Blackstone Stationers, Inc., 585 Merrick Rd., Lynbrook, N.Y.